IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.23632 of 2007
PARASH NATH GUPTA & ANR
Versus
STATE OF BIHAR & ORS

For the petitioners : M/s Navin Kumar &
Brajnandan Singh, Advocates.

For the State : Mr. Jharkhandi Upadhaya, A.P.P.

For O.P. No. 2 : Mr. Sanjay Kumar No. 7, Advocate.

O R D E R

The two petitioners who along with two others have been arrayed as accused in Complaint Case No. 1575 (C) of 2006 have prayed for the quashing of the order dated 9.1.2007 passed therein by Sri R.C.Malviya, Judicial Magistrate, 1st Class, Bettiah, whereby he has taken cognizance of offences under sections 406 and 420 I.P.C. against all the accused persons named in the complaint petition including petitioners.

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One Pappu @ Dharmendra Kumar Gupta, the complainant, impleaded herein as O.P. No. 2, filed the aforesaid complaint on 22.8.2006 alleging commission of offences under sections 420, 406, 323, 504 I.P.C. at the hands of the accused on 2.9.2005 and on various other dates subsequent thereto. According to the complainant petitioner no. 1 was his maternal uncle (*mamu*) and runs a readymade garments shops in Minabazar Bettiah. It is said that on 2.9.2005 petitioner no. 2

came and informed the complainant that petitioner no. 1 had summoned him in response to which the complainant went to the house of petitioner no. 1 at about 7 P.M. that day where all the other accused were also present. It is said that petitioner no. 1 gave out that he was getting financial difficulties in running his business and was in debt of different parties which was to the extent of Rs. 62,785/- and asked him to help him out. The other persons present there also instigated the complainant to lend financial support for petitioner no. 1 to come out of his crisis and including Rs. 9,000/- for securing cash credit loan from bank and some liquid cash a total sum of Rs. 1,07,685/- was required by petitioner no. 1 and in view whereof he would get half partnership in the readymade garments shop located in Mina Bazar. It is further said that the complainant being a close relative of petitioner no. 1 and seeing the crisis he was in and the assurance of half partnership in the shop to be given in lieu of the desired amount on 3.9.2005 he handed over Rs. 72,685/- to petitioner no. 1 in the presence of witness nos. 1 to 5 in receipt whereof the creditors, namely, witness nos. 1 to 5 gave receipt of having received the amount of debt. The complainant is said to have requested petitioner no. 1 to get prepared the deed of half partnership in the shop in his favour but petitioner no. 1 evaded doing so on various pretext.

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Eventually on 2.7.2006 the complainant in presence of the witnesses reiterated his demand for half partnership in the readymade garments shop to which petitioner no. 1 flatly refused whereupon the complainant demanded return of the amount advanced to him and having abused him and assaulted him with slaps and fists the accused threatened him with dire consequences of impleading him in a false criminal case. The complainant complained that the accused persons had cheated him of Rs. 1,07,685/-.

It has been submitted on behalf of the petitioners that they are innocent and have been falsely implicated on the basis of false and concocted allegations. In this connection it was sought to be submitted that all the witnesses in the complaint petition had managed to fabricate some documents showing false money receipt and have falsely filed the complaint case in order to put undue pressure upon these petitioners and the other accused. It was further submitted that the complainant had failed to produce even a chit of paper which would show that the petitioner ever assured him and the learned court without properly appreciating the facts involved in the case and also being misguided with the false statements of the witnesses had taken cognizance under section 406 and 420 I.P.C. The impugned order was sought to be challenged on the ground that

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no document was produced by the complainant in support of his case and claim.

Admittedly the court below held an inquiry under section 202 Cr.P.C. and found that prima facie case appeared to have been made out against the petitioners and, therefore, took cognizance in the matter of the offences aforesaid.

For determining the question whether any process is to be issued or not what the Magistrate has to be satisfied with is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Since the object of an inquiry under section 202 Cr.P.C. is to ascertain whether the allegations made in the complaint are intrinsically true the Magistrate acting under section 203 Cr.P.C. has to satisfy himself that there is sufficient ground for proceeding. In order to come to this conclusion, he is entitled to consider the evidence taken by him or recorded in an inquiry under section 202 Cr.P.C. He is not entitled to rely upon any material besides this and when there is prima facie evidence, though an accused may have a plausible defence, the matter has to be left to be decided by the appropriate forum at the appropriate stage and issue of process cannot be refused. For the purpose, gainful reference may be placed on the decision of Chandradeo Vs. Prakash : AIR 1963 SC 1430.

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In the instant case the allegations against the petitioner nos. 1 and 2 who are father and son by relationship is that petitioner no. 1 having run into outstanding debts by virtue of business not running properly had taken money from the complainant in lieu whereof he had promised half partnership to the complainant in his readymade garments shop but notwithstanding the assurances given to the complainant he had not cared to prepare the partnership deed or induct the complainant as a half share partner in the shop. This would clearly indicate that the petitioner no. 1 from the very beginning never had the intention of inducting the complainant as a partner with half share in the shop and the assurances had been given only to procure the amount from him. The complainant in his statement on S.A. and the other witnesses with minor discrepancies have supported the complainant's case and the learned Magistrate had rightly taken cognizance which cannot be faulted with.

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In view of the discussions made above I find no apparent illegality in the impugned order taking cognizance and while upholding the same this application is dismissed as being misconceived.

(Abhijit Sinha, J.)

Patna High Court, Patna.
Dated : The 17th of September, 2008
Sanjay Pd./A.F.R.

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